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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/648,112

08/25/2003

James Victor Cragg

USDP2226A-SOT2

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06/29/2004

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EXAMINER

ELKINS, GARY E

ART UNIT

PAPER NUMBER

3727

DATE MAILED: 06/29/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No. 10/648,112	Applicant(s) CRAGG, JAMES VICTOR	
Examiner Gary E. Elkins	Art Unit 3727	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____ | 6) <input type="checkbox"/> Other: ____ |

DETAILED ACTION

Double Patenting

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 1-15 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 3, 6, 8 or 13 of U.S. Patent No. 6,691,906.

Although the conflicting claims are not identical, they are not patentably distinct from each other because all the elements in each of claims 1-15 of the application are found in one of claims 1, 3, 6, 8 and 13 of the patent. The difference between application claims 1-15 and patent claims 1, 3, 6, 8 or 13 lie in the fact that the patent claims include more elements and are thus more specific than the application claims. The invention in one of patent claims 1, 3, 6, 8 and 13 is in effect a species of the generic invention of each of application claims 1-15. It has been held that the generic invention is anticipated by the species. See *In re Goodman*, 29 USPQ2d 2010 (Fed. Cir. 1993). Since each of application claims 1-15 is anticipated by one of patent claims 1, 3, 6, 8 and 13, it is not patentably distinct therefrom.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-3 are rejected under 35 U.S.C. 102(b) as being anticipated by Brunstetter.

Brunstetter discloses a holster including a carrier pad 11, a pouch panel 13, a shielding flap 19, a belt hanger 12 and first and second holding elements 21, 20 as claimed. No distinction is seen between the holster claimed over the holster evidenced by Brunstetter as a result of the claimed intended use of the holster to hold a taser, i.e. the holster of Brunstetter is considered capable of holding a taser of substantially the same size as the holster.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 4 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brunstetter in view of Yount. Brunstetter discloses all structure of the claimed holster except detachable fasteners securing the end of the belt hanger. Yount teaches that it is known to make a belt hanger with detachable fasteners 25, 26 to facilitate removing the holster without removing one's belt. It would have been obvious to substitute detachable fasteners for the permanent

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fasteners (stitching) of Brunstetter as taught by Yount since detachably fastening the belt hanger allows easier removal of the holster.

7. Claims 6 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brunstetter in view of Naymark et al. Brunstetter discloses all structure of the claimed holster except securing straps extending from the pouch panel and shielding flap. Naymark et al teaches that it is known to make a belt attached holder with secondary securing elements 46-49. It would have been obvious to provide the holster of Brunstetter with secondary securing straps as taught by Naymark et al to prevent inadvertent opening of the closure flap, e.g. to prevent opening by snagging the flap as one walks or moves.

8. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claims 4 and 5 above, and further in view of Naymark et al. Modified Brunstetter discloses all structure of the claimed holster except securing straps extending from the pouch panel and shielding flap. Naymark et al teaches that it is known to make a belt attached holder with secondary securing elements 46-49. It would have been obvious to provide the holster of Brunstetter with secondary securing straps as taught by Naymark et al to prevent inadvertent opening of the closure flap, e.g. to prevent opening by snagging the flap as one walks or moves.

9. Claims 9 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brunstetter in view of Domingos. Brunstetter discloses all structure of the claimed holster except an interior pocket within the holster. Domingos teaches that it is known to make a holder attached to a belt with an interior pocket to facilitate holding more than one item in the holder. It would have been obvious to make the holster of Brunstetter with an interior pocket as taught by Domingos for the purpose of allowing more than one item to be held within the container.

10. Claims 11 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claims 4 and 5 above, and further in view of Domingos. Modified Brunstetter discloses all structure of the claimed holster except an interior pocket within the holster. Domingos teaches that it is known to make a holder attached to a belt with an interior pocket to facilitate holding more than one item in the holder. It would have been obvious to make the holster of Brunstetter with an interior pocket as taught by Domingos for the purpose of allowing more than one item to be held within the container.

11. Claims 13 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claims 6 and 7 above, and further in view of Domingos. Modified Brunstetter discloses all structure of the claimed holster except an interior pocket within the holster. Domingos teaches that it is known to make a holder attached to a belt with an interior pocket to facilitate holding more than one item in the holder. It would have been obvious to make the holster of Brunstetter with an interior pocket as taught by Domingos for the purpose of allowing more than one item to be held within the container.

12. Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claim 8 above, and further in view of Domingos. Modified Brunstetter discloses all structure of the claimed holster except an interior pocket within the holster. Domingos teaches that it is known to make a holder attached to a belt with an interior pocket to facilitate holding more than one item in the holder. It would have been obvious to make the holster of Brunstetter with an interior pocket as taught by Domingos for the purpose of allowing more than one item to be held within the container.

Conclusion

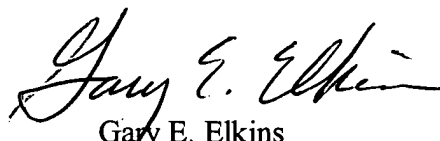
In order to reduce pendency and avoid potential delays, Technology Center 3700 is encouraging FAXing of responses in Office Actions to (703)872-9306. This practice may be used for filing papers not requiring a fee. It may also be used for filing papers which require a fee by Applicants who authorize charges to a PTO deposit account. Please identify the Examiner and art unit at the top of your cover sheet.

If in receiving this Office Action, it is apparent that certain documents are missing, e.g. copies of references cited, form PTO-892, etc., requests for copies of such papers should be directed to Errica Bembry at (703)306-4005.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist at (703)308-1078.

Any inquiry concerning this communication or earlier communication from the Examiner should be directed to Gary Elkins at telephone number (703)308-1034. The Examiner can normally be reached Monday, Tuesday and Thursday.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Mr. Lee Young can be reached at (703)308-2572.


Gary E. Elkins
Primary Examiner
Art Unit 3727